

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

|                            |   |                            |
|----------------------------|---|----------------------------|
| UNITED STATES OF AMERICA,  | ) |                            |
|                            | ) | Supplemental to            |
| Petitioner,                | ) | Civil Action No. 56-15748  |
|                            | ) |                            |
| v.                         | ) | Hon. Paul V. Gadola        |
|                            | ) |                            |
| FTD CORPORATION; FLORISTS' | ) | Civil Contempt Of Judgment |
| TRANSWORLD DELIVERY, INC.; | ) |                            |
| and FTD ASSOCIATION,       | ) |                            |
|                            | ) | Filed: 8/1/95              |
| Respondents.               | ) |                            |

**MEMORANDUM OF THE UNITED STATES  
IN SUPPORT OF PROPOSED ENFORCEMENT ORDER**

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**MEMORANDUM OF THE UNITED STATES  
IN SUPPORT OF PROPOSED ENFORCEMENT ORDER**

**I. INTRODUCTION**

The Department of Justice ("Department") has filed a Petition with this Court for an Order to Show Cause why Respondents FTD Corporation ("FTD Corp."),<sup>1</sup> Florists' Transworld Delivery, Inc. ("FTDI"), and FTD Association ("FTDA"), should not be found in civil contempt of Sections IV and V of the Modified Final Judgment ("MFJ"), entered by this Court on November 8, 1990 in United States v. Florists' Transworld Delivery Association ("FTD"), Civil Action No. 56-15748.<sup>2</sup> However, the parties have stipulated to the entry,

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<sup>1</sup>On December 19, 1994, Perry Capital Corp. ("Perry Capital"), acquired FTD. After the acquisition, Perry Capital split FTD into two parts. Perry Capital (which became FTD Corp. on May 17, 1995), is the parent of the for-profit corporation FTDI, which now operates the former FTD's business operations, including the Mercury Network, the FTDI clearinghouse, and a greeting cards company (see pp. 7-8, *infra*). FTDA is the non-profit, member-owned association that has succeeded to the trade association functions of FTD.

<sup>2</sup>Sections IV and V of the MFJ read in pertinent part:

IV (A) Defendant is enjoined and restrained from

after a period of public comment, of a proposed Enforcement Order. The Department respectfully requests that this Court approve the Stipulation and enter the attached Order directing issuance of notice of the proposed Enforcement Order (Exhibit B to the Stipulation).

Under the proposed Enforcement Order, the Respondents agree that they will: comply fully with the MFJ; terminate the "FTD Only" benefits program; refrain from offering any financial incentives or financial rewards to FTDA members or users of the FTDI clearinghouse that are conditioned upon terminating or forgoing membership or participation in any competing wire association, or other entity or mechanism that transmits or facilitates wire orders; modify the Mutual Support Agreement between FTDI and FTDA to restructure the relationship between the two entities to prevent the possibility of FTDI compelling or enticing FTDA into a future violation of the MFJ; eliminate the overlap of officers between FTD Corp. or FTDI, and FTDA; establish compliance committees to assure that no future violations of the MFJ occur; promptly provide new officers and management employees with copies of the MFJ and a written directive regarding compliance therewith; promptly provide all officers and management employees with copies of the Order entered by the Court with a compliance directive, together with instructions for complying, and an admonition that non-compliance will result in disciplinary action; and

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entering into, adhering to, promoting, or following any course of conduct, practice or policy, or any agreement or understanding, having the purpose or effect of:

\* \* \* \* \*

- (2) Restricting or limiting membership in defendant to florists who are not members of any other wire association.

\* \* \* \* \*

V. Defendant is enjoined and restrained from hereafter (a) entering into, adhering to, promoting, or following any course of conduct, plan, program, practice, or policy, or (b) entering into any agreement or understanding with any other person that is prohibited by or contrary to any of the provisions of the foregoing Section IV of this Modified Final Judgment.

take disciplinary action against any person who refuses or fails to comply with the MFJ or the Order entered by the Court.

In addition, Respondents agree to publish notice of the proposed Enforcement Order and invite comments thereon in FTD Family, thus providing notice to all FTDA members, and to provide actual notice to all competing floral clearinghouses. The Department has tentatively consented to the entry of the proposed Enforcement Order at any time more than seventy (70) days after the last publication of such notice.

This Memorandum is submitted in support of the proposed Enforcement Order and summarizes the Petition which led to entry of the Stipulation. The Petition alleges that the creation and promotion of the new "FTD Only" program by the Respondents violates sections IV(A)(2) and V of the MFJ, and that each Respondent has taken an active role in the creation, development, and implementation of this program. This Memorandum discusses the legal standards and precedents regarding civil contempt and explains the reasons why the Department has tentatively consented to the Stipulation in this instance. Also addressed are the procedures proposed by the Department and agreed to by Respondents for giving notice of the Stipulation and proposed Enforcement Order and obtaining public comment thereon, while assuring the Department's right to withdraw its consent at any time until the proposed Enforcement Order is entered.

The "FTD Only" program operated by Respondent FTDI is designed to induce FTDA member florists to cease doing business with floral wire clearinghouses that compete with FTDI.<sup>3</sup> As part of the "FTD Only" program, FTDI field consultants are providing form termination letters to FTDA member florists to persuade them to sever their memberships with competing clearinghouse associations. More importantly, FTDI offers special financial rewards to florists who join the "FTD Only" program and clear one-hundred percent of their flowers-by-wire orders with FTDI's clearinghouse. In order to receive the economic incentives offered by "FTD Only," FTDA members are required to cancel their memberships in wire clearinghouses that compete with FTDI, so that these associations are no longer a competitive option for them in sending or receiving future wire orders. "FTD Only" incentives are not offered to

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<sup>3</sup>FTDI's competitors are American Floral Services ("AFS"), Teleflora, Redbook, Carik Services, and Florafax. The six wire associations are commonly referred to as "clearinghouses" because they transmit orders and account for all payments.

FTDA members who choose merely to retain that competitive option, regardless of the volume of business they do with FTDI.

In short, the "FTD Only" program, having the impermissible purpose and likely ultimate effect of restricting or limiting membership in FTDA to florists not affiliated with other wire clearinghouses, violates the MFJ and will continue to violate it unless the Department obtains the remedial relief contained in the proposed Enforcement Order.

The Department submits that entry of the proposed Enforcement Order would vindicate the authority of the Court by remedying violations of the MFJ and by establishing procedures to ensure Respondents' future compliance with the MFJ. Further, by entering the proposed Enforcement Order, the Court would save the Department and the Respondents substantial time and resources which would be needed for litigation of the case arising from the Department's investigation.



## **II. PRIOR ORDERS OF THE COURT**

On June 1, 1956, the Department filed in this Court a civil action against FTD, the largest flowers-by-wire association in the United States with over 87 percent of all wire service orders. The Complaint alleged that FTD violated Section 1 of the Sherman Act by imposing an exclusive membership restriction by which its member florists were prohibited from belonging to any other flowers-by-wire association. This exclusive membership restriction had allegedly given FTD the power to maintain its market dominance and eliminate competition. The Final Judgment, entered by this Court against FTD upon consent the day the complaint was filed, terminated the exclusive membership restriction and permanently enjoined FTD from, inter alia, engaging in practices that had the purpose or effect of limiting membership in FTD to those not affiliated with other flowers-by-wire clearinghouse associations.

On August 1, 1966, the Department filed in this Court a new civil action against FTD alleging violations of Sections 1 and 2 of the Sherman Act. The 1966 Complaint alleged price fixing, territorial arrangements, and agreements which excluded from FTD membership establishments that were not primarily engaged in the florist business. The Final Judgment in that action, entered upon consent on March 20, 1969, enjoined FTD from, inter alia, engaging in price fixing, publishing or suggesting prices except in certain limited circumstances, or restricting members from engaging in any lawful business other than the retail florist business.

On November 8, 1990, upon a stipulation between FTD and the Department for entry of an order terminating the 1956 and modifying the 1969 Final Judgments, this Court entered a Modified Final Judgment ("MFJ") with respect to both proceedings. Incorporating elements of both decrees, the MFJ clarified that FTD could compete energetically for wire orders, but continued to forbid any attempt by FTD to use its economic power to deter its members from belonging also to competing floral wire associations.<sup>4</sup> Most importantly, Section IV(A) of

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<sup>4</sup>"The proposed amendments would not, however, give FTD absolutely free rein to take any action it deemed to be 'competitive.' Any action whose purpose or effect was to return FTD to the exclusive membership organization it once was would be prohibited by the proposed MFJ." Memorandum of United States in Support of Defendant FTD's Amendment Motion, at 19 (July 31, 1990).

the MFJ reiterates the 1956 decree's prohibition on "entering into, adhering to, promoting, or following any course of conduct, practice or policy, or any agreement or understanding, having the purpose or effect of: . . . (2) Restricting or limiting membership in defendant to florists who are not members of any other wire association." The MFJ by its terms applies to "defendant and its officers, agents, servants, employees, subsidiaries, successors, and assigns" (Article III), and remains in force for ten years from the date of its entry (Article X).

### III. STATEMENT OF FACTS

From its inception as a cooperative of retail florists in 1910 until December 1994, when it was acquired and reorganized by Perry Capital, FTD was the leader in the flowers-by-wire industry; its Mercury Man logo is one of the most recognized symbols in the world. As a cooperative, FTD's primary objective was to provide services and products to its members.

FTD developed the Mercury Network, the only viable computerized telecommunications system for the transmission of flowers-by-wire orders. It electronically links an originating florist in one market and a delivering florist in another.<sup>5</sup> FTD's clearinghouse, which settles accounts among originating and delivering member florists, competes with five wire clearinghouse associations on the basis of service and fees to retail florists for floral wire orders transmitted over the Mercury Network. The average florist participates in at least two flowers-by-wire clearinghouses; however, to send or receive orders over the Mercury Network, a florist has had to belong to FTD or, since December 1994, Respondent FTDA. Moreover, since FTD's clearinghouse perennially accounts for the large majority of wire orders, a florist that participated in any clearinghouse would choose FTD -- or now FTDA -- in order to increase its opportunities to receive out-of-town orders.

A 99-year "Mutual Support Agreement," dated December 18, 1994, sets forth the mutual rights and obligations of FTDI and FTDA after the acquisition and reorganization.<sup>6</sup> The Agreement binds FTDA for its 99-year term not to provide "material support or material assistance" to any person in competition with any of FTDI's businesses.<sup>7</sup> The Agreement also makes FTDA

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<sup>5</sup>Telephone, facsimile, and telex are less attractive alternatives. Florists prefer to place out-of-town orders by means of the Mercury Network. They may do this either by entering an order into the Mercury Network through FTDI or by using the Mercury Network to reach out-of-town florists through a competing wire clearinghouse.

<sup>6</sup>Notably, the Agreement sets forth FTDA's and FTDI's recognition of their obligations under the MFJ: "Each of FTDA, FTD and, following the Merger, FTDI shall be bound by the terms of the Consent Order . . . ." Mutual Support Agreement, ¶2.8, at 19.

<sup>7</sup>Mutual Support Agreement, ¶ 3.1(o)(i), at 29.

the exclusive agent of FTDI in licensing the Mercury Man trademark and logo to florists--subject to FTDI's veto.<sup>8</sup> That veto, however, is only one example of the control FTDI maintains over FTDA pursuant to the Agreement. The Agreement gives FTDI the right to "review and approve" FTDA's membership standards at least annually, and more often if the standards are "materially modified" during the year.<sup>9</sup> Moreover, should FTDI be dissatisfied with FTDA's sanctions against a member for a violation of FTDA standards, FTDI has the right "to take whatever action FTDI deems necessary to enforce the FTDA Standards against said Member, including seeking termination of membership . . . ." <sup>10</sup> The Agreement also gives FTDI the right to terminate FTDA members for violations of FTDI's own standards.<sup>11</sup>

Shortly after the acquisition, FTDI announced and implemented an enhanced "FTD Only" program directed at FTDA members. Through overlapping personnel, FTDI and FTDA have coordinated to implement the program.

Prior to the acquisition, "FTD Only" had been a recognition program that offered members only a plaque as reward for directing orders exclusively through FTD. However, under FTDI's control, the "FTD Only" program has become an incentive package targeted at eliminating competition. To encourage florists to join the "FTD Only" program, Respondent FTDI has offered them, inter alia, (a) a buy-back of any unsold holiday product; (b) extra voting stock in FTD Corp.; (c) increased local advertising; and (d) reduced branch shop and multi-shop fees. FTDI representatives also tell potential "FTD

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<sup>8</sup>Id., ¶ 3.1(c)(i), at 21.

<sup>9</sup>Id., ¶ 3.1(m), at 28.

<sup>10</sup>Id., ¶3(d)(1), at 23. The FTDA Handbook makes clear that FTDI has unilateral disciplinary power. The Handbook's Rules and Bylaws Regarding Discipline of Members states in part that "FTDI shall have the right to take action to enforce the FTDA standards for Membership by disciplining such Member, which may include termination of membership in FTDA." FTDA Handbook, Rules and Bylaws Regarding Discipline of Members, Rule 17, at 73.

<sup>11</sup>Id., ¶ 3(d)(2), at 24. While the Agreement's language is unclear, the FTDA Handbook leaves no doubt: "FTDI shall have the right to impose penalties upon FTDA members for violation of FTDI Standards, including suspension and termination of FTDA membership." FTDA Handbook, Rules and Bylaws Regarding Discipline of Members, Rule 16.a, at 73.

Only" members that they will receive from FTDI approximately \$700-800 in cash benefits plus cost savings of between \$2000 and \$9000 per year. FTDI's immediate objective is to double or treble "FTD Only" membership. "FTD Only" rewards are given only to members who agree to deal exclusively with FTDI. They are not given to FTDA members who maintain memberships with competing wire associations, thus retaining the ability to occasionally place or receive orders through competing clearinghouses.

In connection with the implementation of the "FTD Only" program, FTDI field representatives are providing FTDA members with pre-addressed form letters and step-by-step instructions for terminating their membership agreements with competing wire associations. Further, FTDI field representatives are instructing FTDA members not to deal with competing wire associations. FTDI field representatives have been attempting to limit the number of wire services to which FTDA members subscribe, and have been successful in doing so. Such efforts have been conducted with the knowledge and approval of senior supervisors at FTDI. Furthermore, as "FTD Only" members know, FTDI is in the unique position of being able to monitor their compliance through operation of the Mercury Network.

FTDI kept its scheme secret as long as possible, partially by using many different versions of the form letters seeking to drop wire services other than FTDI. As a result of the "FTD Only" program, almost 1000 memberships in wire associations that compete with FTDI have been cancelled, despite the pendency of the Department's investigation, which has been known to FTDI and FTDA. These memberships had been held by over 750 florists, who were recently members of two or more wire associations, but now belong only to FTDI. [FTDI Tabulation of 5/28/95].

In short, Respondents attempt to build a larger base of "FTD Only" members, which would, in turn, generate a larger number of FTDI orders. The evident--and intended--effect of this practice is a loss of subscribers to competing wire services, thereby affecting both the volume of their orders and their geographic coverage. FTDI need not induce all florists to deal exclusively with it in order to deprive other associations of the volume of business they need to remain competitively vigorous.

#### IV. LEGAL AUTHORITY

A contempt of court amounts to a disregard of judicial authority. See United States v. United Mine Workers of America., 330 U.S. 258 (1947), United States v. Greyhound Corp., 363 F. Supp. 525 (N.D. Ill.), aff'd, 508 F.2d 529 (7th Cir. 1974). A civil contempt proceeding can be brought pursuant to 18 U.S.C. § 401 (1988). See In Re Jaques, 761 F.2d 302, 306 (6th Cir. 1985), cert. denied, 475 U.S. 1044 (1986). A court whose order has been disobeyed has jurisdiction and venue to hear the contempt proceeding. Leman v. Krentler-Arnold Hinge Last Co., 284 U.S. 448 (1932); Myers v. United States, 264 U.S. 95 (1924); Stiller v. Hardman, 324 F.2d 626 (2d Cir. 1963).



A) Respondents Could Be Held In Civil Contempt

Failure to comply with a court order or decree may be deemed contempt. To prove civil contempt, it is necessary for the Petitioner to show that there was a lawful decree, the Respondents had knowledge of the decree, and the decree was violated. United States v. Greyhound Corp., 363 F. Supp. at 570; cf. United States v. Robinson, 922 F.2d 1531 (11th Cir. 1991); United States v. Christie Industries, Inc., 465 F.2d 1002 (3d Cir. 1972). It is well settled that civil contempt is established through "clear and convincing" evidence of a violation of a lawful court order. See In Re Jaques, 761 F.2d at 306. Evidence of intent or willfulness on the part of the defendant is not required for a finding of civil contempt. See McComb v. Jacksonville Paper Co., 336 U.S. 187, 191 (1949); TWM Mfg. Co., Inc. v. Dura Corp., 722 F.2d 1261, 1273 (6th Cir. 1983), cert. denied, 479 U.S. 852 (1986).

This Court may take judicial notice of relevant facts stated in the MFJ that are indisputably a matter of public record. These include the terms and provisions of the MFJ and its applicability to the Respondents. See Glover v. Johnson, 934 F.2d 703, 708-9 (6th Cir. 1991); In re Arthur Treacher's Franchise Litigation, 689 F.2d 1150, 1156 (3d Cir. 1982).

Those Respondents that are either parties to the MFJ or successors to such parties are presumptively bound by its terms. A successor "who has received a transfer of the business or some part of it from the enjoined party" after imposition of the injunction is subject to contempt proceedings. G. & C. Merriam Co. v. Webster Dictionary Co., Inc., 639 F.2d 29, 36 (1st Cir. 1980) (citing Herrlein v. Kanakis, 526 F.2d 252, 254-5 (7th Cir. 1975)).

By its terms, the MFJ applies to "defendant and its officers, agents, servants, employees, subsidiaries, successors, and assigns." See Article III. Respondents FTD Corp., FTDI, and FTDA, as successors to FTD, are clearly bound by the MFJ; in fact, as noted above, FTDI and FTDA acknowledge as much in the Mutual Support Agreement.<sup>12</sup>

While the contemnor's knowledge of the court order at issue is an element of any contempt case, Douglass v. First National Realty Corp., 543 F.2d 894 (D.C. Cir. 1976), the contemnor is only required to have knowledge of the "existence of the order," not "the particulars of that order," for this

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<sup>12</sup>See n.6, supra at 8.

element to be satisfied. General Motors Corp. v. Gibson Chemical & Oil Corp., 627 F. Supp. 678, 681-82 (E.D.N.Y. 1986). The officers, directors, and employees of Respondents FTD Corp., FTDI, and FTDA know of the existence of the MFJ. FTD and its successors have operated under orders of this Court since 1956. Further, Respondents FTD Corp., FTDI, and FTDA have expressly referred to the MFJ in various publications, contracts, merger documents, and other legal filings.

The MFJ prohibits the creation and development of a program such as the current "FTD Only," a marketing effort that was designed with the prohibited purpose and will likely have the prohibited effect of restricting or limiting membership in FTDA to florists who are not members of other wire associations. Specifically, Section IV(A)(2) of the MFJ states that the Respondents may not, inter alia, promote a course of conduct having the purpose or effect of restricting or limiting membership in FTDA to florists who are not members of any other wire association. Section V enjoins the Respondents from, inter alia, promoting or following a course of conduct, agreement or understanding that is prohibited by or contrary to Section IV of the MFJ.

"FTD Only" is not a mere marketing plan designed to persuade, through better service or lower per-transaction prices, florists to place a higher number of flowers-by-wire transactions with FTDI. Rather, this program is carefully designed to limit membership in competing wire associations, so that for future sales, these wire associations are no longer a competitive option for florists participating in FTDI. If the "FTD Only" program is allowed to continue, it will cause irreparable harm to competition in the flowers-by-wire industry, a result that the MFJ is designed to prevent.

B) The Scope of Relief in Civil Contempt Actions

"Civil contempt . . . has a remedial purpose -- compelling obedience to an order of the court for the purpose of enforcing the other party's rights, or obtaining other relief for the opposing party." International Business Machines Corp. v. United States, 493 F.2d 112, 115 (2d Cir. 1973), cert. denied, 416 U.S. 995 (1974) (citations omitted). In this action, the Department seeks to put an end to Respondents' past noncompliance while assuring their full compliance in the future. Vuitton et Fils S.A. v. Carousel Handbags, 592 F.2d 126, 129-30 (2d Cir. 1979).

In designing a remedy that will bring about this result, a court has broad powers and discretion. McComb v. Jacksonville Paper Co., 336 U.S. at 193. The remedies available for civil contempt include injunctions requiring "the doing of a variety of acts" necessary "to effect compliance with [the court's underlying] decree." Id. Such injunctions may require additional affirmative acts not mandated by the underlying decree and may exact fines for continued non-compliance. United States v. Work Wear Corp. 602 F. 2d 110, 115 (6th Cir. 1979); see also In re Arthur Treacher's Franchise Litigation, 689 F.2d at 1158-59. Remedies for civil contempt may even include imprisonment, if the defendant has the opportunity to purge the sentence through compliance with the court's order. See International Union v. Bagwell, 114 S. Ct. 2552, 2558 (1994).

**V.     THE PROPOSED PROCEDURES FOR GIVING PUBLIC NOTICE OF THE  
PENDING ORDER AND INVITING COMMENT ARE APPROPRIATE**

The opinion in United States v. Swift & Co., 1975-1 Trade Cas. (CCH) ¶60,201 at 65,703 (N.D. Ill. 1975), discusses a court's responsibility to implement procedures that will give non-parties notice of, and an opportunity to comment upon, antitrust judgment modifications proposed by consent of the parties:

Cognizant . . . of the public interest in competitive economic activity, established chancery powers and duties, and the occasional fallibility of the Government, the court is, at the very least, obligated to insure that the public, and all interested parties, have received adequate notice of the proposed modification. . . . [Footnote omitted.]

Over the years, the Department has adopted and refined a policy of consenting to motions to modify or terminate judgments in antitrust actions only on condition that an appropriate effort be undertaken to notify potentially interested persons. The Department believes that giving the public notice of, and an opportunity to comment upon, the proposed Enforcement Order here, which also impacts an antitrust Judgment (the MFJ), is equally desirable to insure that both the Department and the Court properly assess the public interest.

In the case at bar, the Department has proposed, and Respondents have agreed to, the following:

1. When the Court enters the publication Order, the Department will publish in the Federal Register a notice (a) announcing the proposed Enforcement Order and the Department's tentative consent to it; (b) summarizing the Petition and the proposed Enforcement Order; (c) explaining that copies of the relevant paper can be inspected at the offices of the Antitrust Division and the Clerk of the Court; (d) stating the copies of the paper can be obtained from the Antitrust Division, upon request and payment of the copying fees prescribed by Department regulations; and (e) inviting all interested persons to submit comments concerning the Proposed Enforcement Order to the Antitrust Division.

2. Respondents will publish notice of the Petition and proposed Enforcement Order in the first feasible issue of FTD Family, thereby giving notice to all FTDA members, and will provide actual notice to all competing floral clearinghouses. The published notices will invite public comment during the following sixty days and contain essentially the same information about the contemplated proceeding as appears in the Department's Federal Register notice.

3. Respondents will give actual notice of the Petition and proposed Enforcement Order by first class mail to the five competing floral clearinghouses. Their comments will also be

invited.

4. The Department will file with the Court copies of all comments that it receives.

5. The parties will stipulate that the Court will not rule upon the proposed Enforcement Order for at least seventy (70) days after the last publication by Respondents and after the last mailing described above (and thus for at least ten days after the close of the period for public comments), and the Department will reserve the right to withdraw its consent to the proposed Enforcement Order at any time until it is entered.

**VI. THE UNITED STATES BELIEVES THAT  
THE REMEDIES CONTAINED IN THE PROPOSED  
ENFORCEMENT ORDER WILL END  
RESPONDENTS' NONCOMPLIANCE AND ASSURE  
FULL COMPLIANCE IN THE FUTURE AND HAS  
THEREFORE TENTATIVELY CONSENTED TO ITS ENTRY**

While the proposed Enforcement Order would be entered without any admission or determination of wrongdoing by Respondents and without any findings or adjudication with respect to any issue of fact or law arising from the Petition, Respondents have agreed to the following conditions:

1. They will comply forthwith with the MFJ;

2. All "FTD Only" florists will be notified by August 4, 1995, that the "FTD Only" benefits program will be terminated, for all practical purposes, effective September 1, 1995;

3. They are henceforth enjoined and restrained from offering any financial incentives or financial rewards to any FTDA member or user of the FTDI clearinghouse that are conditioned upon terminating or forgoing membership or participation in any competing wire association, or other entity or mechanism that transmits or facilitates wire orders;

4. The Mutual Support Agreement between FTDI and FTDA will be modified so as to restructure the relationship between the two entities to prevent the possibility of FTDI compelling or enticing FTDA into future violations of the MFJ;

5. There will be no further overlap of officers between FTD Corp. or FTDI, and FTDA;

6. Respondents FTD Corp., FTDI, and FTDA shall each establish compliance committees, which shall each include participation of at least one attorney;

7. New officers and management employees of each Respondent will be promptly provided with copies of the MFJ and a written directive regarding compliance therewith, and required to acknowledge their receipt thereof;

8. Shortly after entry of the proposed Enforcement Order, all officers and management employees shall receive (a) copies of the Order with a compliance directive, (b) instructions for complying, and (c) an admonition that non-compliance will result in disciplinary action, which may include dismissal and may result in conviction for contempt and imprisonment or fine;



9. Respondents shall take disciplinary action against any person under their respective control who refuses or fails to comply with the MFJ or the Order entered by this Court;

10. A daily fine of up to \$5,000 may be imposed upon a Respondent that fails timely to carry out the requirements of paragraphs 2, 4, 6 and 8 above; and

11. The termination date of the MFJ shall be extended for five (5) years until August 1, 2005, and the Order entered by this Court shall terminate at the same time.<sup>13</sup>

In view of the fact that Respondents have agreed, without trial, to accept virtually all of the remedial relief sought in the Prayer of the Petition, the Department supports entry of the proposed Enforcement Order, subject to its option to withdraw its consent at any time until said Order is entered.

## **VII. CONCLUSION**

For the foregoing reasons, the Department tentatively consents to entry of the proposed Enforcement Order and asks the Court to enter now the Order submitted herewith directing the publication of notice of the proposed Enforcement Order.

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<sup>13</sup>Additional understandings between FTDI and the Department are set forth in the attached letter of July 31, 1995 from Rebecca P. Dick of the Department to John M. Nannes, counsel for FTDI.

Dated: July 31, 1995

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
Rebecca P. Dick  
Acting Deputy Director of  
Operations  
Antitrust Division

\_\_\_\_\_/s/\_\_\_\_\_  
Bernard M. Hollander

\_\_\_\_\_/s/\_\_\_\_\_  
Christopher J. Kelly  
Acting Chief  
Civil Task Force I  
Antitrust Division

\_\_\_\_\_/s/\_\_\_\_\_  
James D. Villa

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